UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. ENRON CORP., et al., Defendants.	:	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION Hon. Melinda Harmon
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. KENNETH L. LAY, et al., Defendants.	:	

REPLY MEMORANDUM OF LAW OF DEFENDANT ARTHUR ANDERSEN & CO., INDIA IN FURTHER SUPPORT OF ITS MOTION TO DISMISS THE CONSOLIDATED COMPLAINT

936

Defendant Arthur Andersen & Co., India ("Andersen-India"), by its attorneys, submits this reply memorandum of law in further support of its motion to dismiss the consolidated complaint (the "complaint").

PRELIMINARY STATEMENT

The only references to Andersen-India in plaintiffs' 500-page complaint are as follows:

> "[Andersen-India] is part of Andersen-Worldwide. Andersen-India participated in the 97-00 audits of Enron." (Complaint, ¶ 92(b)).
>
> "Andersen-India provided services related to the power plant in Dabhol [India]." (*Id.*, ¶ 897).

As earlier demonstrated by Andersen-India on this motion, such allegations – which do not even suggest any U.S. contacts or improprieties -- are obviously insufficient to confer personal jurisdiction over Andersen-India. (*See* Andersen-India Motion to Dismiss at 8-9).

Since the filing of their complaint, and in responding to Andersen-India's motion to dismiss, plaintiffs have had ample opportunity to present to the Court additional facts to support their assertion of jurisdiction. They have failed to do so, continuing to rely exclusively on the threadbare allegations of their complaint. Not a single affidavit or evidence of any kind has been offered by plaintiffs to connect Andersen-India to the United States. The reason for plaintiffs' failure is clear: there is nothing to support their assertion of jurisdiction over Andersen-India.

Likewise, plaintiffs have failed to rebut Andersen-India's showing that it has not been validly served in this action. Because this Court lacks personal jurisdiction over Andersen-India, the complaint as against it should be dismissed.

ARGUMENT

I. ANDERSEN-INDIA HAS NOT BEEN VALIDLY SERVED

Andersen-India has demonstrated that it is a partnership of chartered accountants organized under the laws of India, with offices in Mumbai, New Delhi, Bangalore, Chennai, and Pune, India. (Parikh Decl. at ¶2).[1] Andersen-India is not registered to do business in the United States and has no offices, agents, employees or representatives in the United States. (Parikh Decl. at ¶¶3-9).

Plaintiffs assert that service was valid because a person named "Carol Gadbois accepted service for . . . Andersen-India [in Chicago, Illinois]." Memorandum In Opposition To Motions To Dismiss of Philip Randall, *et al.* ("Opp. Mem.") at 2. Plaintiffs utterly fail to explain who Ms. Gadbois is or how delivery of papers to her in Chicago constitutes good service on Andersen-India. To the contrary, Andersen-India has no agent authorized to receive service of process anywhere in the United States. (Parikh Decl. at ¶7).

When a defendant challenges sufficiency of service of process, the party responsible for serving process has the burden of proving its validity. *See Systems Signs Supplies v. U.S. Dept. of Justice*, 903 F.2d 1011, 1013 (5th Cir. 1990); *Jackson v. U.S.*, 138 F.R.D. 83, 87 (S.D. Tex. 1991). Andersen-India has directly refuted the contention that anyone in the United States was authorized to accept service on its behalf. (Parikh Decl. at ¶7). Having failed to submit any evidence supporting the validity of service, plaintiffs have failed to meet their burden of showing valid service of process. *See, e.g., Systems Signs*, 903 F.2d at 1013; *Jackson*, 138 F.R.D. at 87.

---

[1] "Parikh Decl." refers to the Declaration of Bobby Parikh dated May 8, 2002 previously submitted in support of this motion.

II. ANDERSEN-INDIA IS NOT SUBJECT TO PERSONAL JURISDICTION

Plaintiffs claim that Andersen-India is subject to jurisdiction because it allegedly participated in Enron audits and provided services related to a power plant in Dabhol, India. Plaintiffs allege no facts showing that Andersen-India had any relevant contacts with the U.S, that it "purposefully directed" any of its activities toward the U.S. or that it engaged in any improprieties. Accordingly, personal jurisdiction over Andersen-India is lacking and the complaint should be dismissed.[2]

A. "Specific Jurisdiction"

As demonstrated in Andersen-India's initial brief, the U.S. Supreme Court has made clear that to establish specific jurisdiction, plaintiffs must show that Andersen-India "'*purposefully directed* [its] activities at residents of the [United States] and [that] the litigation results from alleged injuries that *arise out of or relate to* those activities.'" *McNamara v. Bre-X Minerals Ltd.*, 46 F. Supp.2d 628, 633 (E.D. Texas 1999) (emphasis added) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).[3] The court is "required to examine the relationship between the defendants, the forum state, and the litigation . . . to determine 'whether the defendants[s] purposefully established minimum contacts in the forum . . . ' so that it was foreseeable 'that the defendant['s] conduct and

---

[2] As set forth in the accompanying declaration of Jairaj Purandare dated June 24, 2002 ("Purandare Dec."), Andersen-India's earlier statement that it had never been engaged directly by Enron Corp. was erroneous. However, the work for Enron Corp. (on Indian tax issues and the like) was performed exclusively in India and the complaint does not allege that such work involved any improprieties on Andersen-India's part. (Purandare Dec. at ¶2).

[3] Plaintiffs concede, as they must, that there is no basis for a finding of general jurisdiction over Andersen-India. Indeed, they have not pled that Andersen-India engaged in *any* acts in the U.S., much less the "continuous and systematic" activities required for a showing of general personal jurisdiction. *Guidry v. United States Tobacco Company, Inc.*, 188 F.3d 619, 624 (5th Cir. 1999).

connection with the forum . . . are such that [they] should reasonably anticipate being haled into court there.'" *Guidry v. United States Tobacco Company, Inc.*, 188 F.3d 619, 624-25 (5th Cir. 1999) (quoting *Burger King*, 471 U.S. at 474) (internal quotations and citations omitted); *Wien Air Alaska, Inc. v. Brandt*, 195 F.3d 208-212 (5th Cir. 1999) (specific acts must be directed toward forum).

In addition to showing "minimum contacts," "the exercise of jurisdiction over the nonresident defendant must also not offend 'traditional notions of fair play and substantial justice.'" *Wilson v. Belin*, 20 F.3d 644, 647 (5th Cir. 1994) (quoting *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113 (1987)). In particular, the Supreme Court has cautioned that "great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Asahi, supra at* 115.

B. Plaintiffs' Have Failed to Satisfy Their Burden of Establishing Personal Jurisdiction

It is undisputed that plaintiffs ultimately bear the burden of establishing the Court's jurisdiction over Andersen-India. *Thompson v. Chrysler Motors Corp.*, 755 F.2d 1162, 1165 (5th Cir. 1985). Here, plaintiffs fail to even make out a *prima facie* case.

Plaintiffs' assertion of jurisdiction over Andersen-India is based entirely on the allegations that Andersen-India participated in the 1997-2000 audits of Enron Corp. and that it provided services in India relating to the Dabhol, India power plant project. Opp. Mem. at 8. Even if assumed to be true, plaintiffs' allegations are woefully deficient. Nowhere do plaintiffs even suggest that Andersen-India performed its work improperly, that it made any material misrepresentations or omissions, that it directed any

misrepresentations or statements to the United States, that it intended to mislead or harm anyone or that it "purposefully directed" its activities at the U.S. and that this litigation "arose out of or related to" any of Andersen-India's alleged activities. As a result, plaintiffs have failed to make out a case of personal jurisdiction.[4]

The primary case relied upon by plaintiffs -- *SEC v. Cook*, 2001 WL 896923 (N.D. Texas Aug. 2, 2001) -- in no way supports their claim. According to plaintiffs, *Cook* stands for the proposition that a conclusory allegation that a foreign defendant has "participated" in a "U.S.-based fraudulent scheme" suffices to create minimum contacts. Opp. Mem. At 5-6. That is simply wrong. To the contrary, the SEC in *Cook* presented detailed allegations of U.S. contacts that allowed the court to exercise jurisdiction. The SEC alleged in *Cook* that, as part of a Ponzi scheme, the foreign defendant had solicited new investors in the scheme, disseminated information to the potential investors, assisted investors in placing their funds into the scheme, and received wire transfers in U.S. currency from the United States which consisted of funds from the misled U.S. investors. These detailed allegations are a far cry from the conclusory allegations asserted here.

---

[4] Even if plaintiffs alleged that Andersen-India's accounting work was somehow deficient, that it was relied upon by U.S. investors and that Andersen-India could have foreseen such reliance, personal jurisdiction would still be lacking. *See Trierweiler v. Croxton and Trench Holding Corp.*, 90 F.3d 1523, 1535 (10th Cir. 1996) ("Although [nonresident accounting firm] might have foreseen reliance, its activities were not enough to constitute purposeful availment"); *General Electric Capital Corporation v. Grossman*, 991 F.2d 1376, 1387-88 (8th Cir. 1993) (nonresident accounting firm defendants that provided reports for use in financial statements they knew would go to investors in forum state did not "purposefully direct" such reports into forum such that they had "fair warning" they might be sued); *Leasco Data Processing Equipment Corporation v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972) (English accountants who knew that their audits would be relied upon by U.S. investors were not subject to jurisdiction).

Plaintiffs also assert that personal jurisdiction exists over Andersen-India because it "engaged in a course of conduct that was designed to harm American investors." Opp. Mem. At 9. This conclusory allegation fails because plaintiffs have not alleged any facts as to what that "course of conduct" was, or any facts sufficient to show that Andersen-India intended to harm anyone anywhere -- much less that it engaged in activities intended to harm U.S. investors.

Plaintiffs' reliance on *Amoco Chemical Company v. Tex Tin Corp.*, 925 F. Supp. 1192 (S.D. Texas 1996) in support of this proposition is entirely misplaced. In fact, *Amoco* serves to illustrate the wide gulf between particularized allegations sufficient to establish minimum contacts and the patently insufficient conclusory allegations made by plaintiffs here. In *Amoco*, plaintiffs alleged specific facts showing that a nonresident defendant over whom jurisdiction was sought had "intentionally deprived [a resident defendant] of its ability to [meet certain contractual funding obligations to plaintiffs] in Texas by serving as the recipient of a fraudulent transfer of the [resident defendant's] assets." *Amoco*, 925 F. Supp. at 1200. Defendants did not dispute the facts, asserting only that jurisdiction should not be exercised because the fraudulent transfer had not taken place in Texas. The court held that minimum contacts with Texas had been established through the assertion of specific facts showing intentional participation of the nonresident defendant in a fraud directed towards Texas (*id.*) -- which is precisely what plaintiffs have failed to show in this case.

C. The Exercise Of Personal Jurisdiction Over Andersen-India Would Violate Due Process

In asserting that the exercise of jurisdiction over Andersen-India would comport with due process, plaintiffs ignore the first factor to be considered by the Court,

i.e. the burden on the defendant. As the Supreme Court held in *Asahi Metal Industry Co. v. Superior Court of California,* 480 U.S. 102, 113-114 (1987):

> The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.

Where, as here, plaintiffs' jurisdictional allegations are essentially non-existent, it would be entirely unreasonable to compel Andersen-India to defend itself here. And, contrary to plaintiffs' suggestion, the "sheer magnitude" of this case does not justify the exercise of jurisdiction over a defendant with no connections to the forum. While the U.S. certainly has an interest in litigating claims relating to Enron, that interest cannot be presumed to permit plaintiffs to sue anyone in the world in this Court. Where -- as here -- plaintiffs have failed to show any connection between the actions of a foreign defendant and the United States, there exists no basis for the assertion of personal jurisdiction. Plaintiffs' claims against Andersen-India should be dismissed.

CONCLUSION

Andersen-India respectfully requests that the Court grant its motion to dismiss and enter an order dismissing the Consolidated Complaint as against it with prejudice.

Dated: New York, New York
June 24, 2002

Respectfully submitted,

HOGUET NEWMAN & REGAL, LLP

By: _____
Michael G. Davies (MD-6045)
10 East 40th Street
New York, New York 10016
(212) 689-8808

Attorneys for Defendant
Arthur Andersen & Co., India

Of Counsel:
Matthew D. Shaffer
TBA #18085600
Fed. I.D. 8877
SCHECHTER, McELWEE & SHAFFER, L.L.P.
3200 Travis, 3rd Floor
Houston, Texas 77006
(713) 757-7811

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply Memorandum of Arthur Andersen & Co., India in Further Support of its Motion to Dismiss the Consolidated Complaint has been served on counsel of record by electronic mail to the temporary website (www.es13624.com) on this 24th day of June, 2002.

Ellen Calderon

Ellen Calderon